MF 07-6
Tax Type: Motor Fuel Use Tax
Issue: Dyed/Undyed Diesel Fuel (Off Road Usage)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE OF THE STATE OF ILLINOIS		
v.	**Docket No.**	**06-ST-0000**
	Acct No.	**00-00000**
JOHN DOE	**NTL No.**	**00-000000 0**
Taxpayer		

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, appearing *pro se*.

Synopsis:

The Department of Revenue ("Department") issued a Notice of Penalty for Dyed Diesel Fuel Violation ("Notice") to John Doe ("taxpayer"). The Notice alleged that the taxpayer operated a licensed motor vehicle with dyed diesel fuel in its ordinary attached fuel tank in violation of the Motor Fuel Tax Act ("Act") (35 ILCS 505/1 *et seq.*). The taxpayer timely protested the Notice. A hearing was held during which the taxpayer filed a Motion to Dismiss and argued that the Notice should be dismissed because the Department violated his constitutional rights and committed unlawful acts against him.

After reviewing the record, it is recommended that the Motion be denied and this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. On Thursday, June 22, 2006, two agents from the Department's Bureau of Criminal Investigation arrived at the taxpayer's residence in Anywhere, Illinois, at approximately 1:00 p.m. (Dept. Ex. #2)
2. Upon arrival, the agents contacted the taxpayer and advised him that the purpose of the visit was to conduct a dyed diesel fuel inspection. The agents gave the taxpayer RMFT-130, Dyed Diesel Fuel Inspection Notice, and explained the process. The taxpayer agreed to cooperate. (Dept. Ex. #2)
3. The agents tested the fuel in the ordinary tank of the taxpayer's only diesel powered truck, which had license plate number 000000-0. The truck was located in the rear of the residence. (Dept. Ex. #2)
4. The test result of the sample taken from the tank indicated the presence of dyed diesel fuel with a dye concentration of 10.8 parts per million. (Dept. Ex. #2)
5. On June 30, 2006, the Department issued a Notice to the taxpayer showing a penalty due of $2,500 for being the operator of a licensed motor vehicle that had dyed diesel fuel in its tank on June 22, 2006. The Notice was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1)

CONCLUSIONS OF LAW:

Paragraph 15 of section 15 of the Act provides in relevant part as follows:

> 15. If a motor vehicle required to be registered for highway purposes is found to have dyed diesel fuel within the ordinary fuel tanks attached to the motor vehicle * * *, the operator shall pay the following penalty:

First occurrence……..…….……$2,500
Second and each occurrence thereafter……..…….……$5,000

(35 ILCS 505/15). Subsection (b) of the Department's regulation concerning penalties for dyed diesel fuel violations states that a penalty of $2,500 shall be imposed if a licensed motor vehicle is found to have dyed diesel fuel within the ordinary fuel tank. Subsection (g) of the same regulation provides as follows:

> The penalties imposed by subsections (b) and (e) of this Section will be imposed only when the special fuel contains the dye Solvent Red 164 in quantities greater than .1 part per million. 86 Ill. Admin. Code §500.298(g).

Section 21 of the Act incorporates by reference section 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department's determination of the amount owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount due. 35 ILCS 505/21; 120/5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the penalty is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill. App. 3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill. App. 3d 1036, 1039 (2nd Dist. 1978).

In the present case, the Department's *prima facie* case was established when the Department's certified copy of the Notice was admitted into evidence. Once the Notice was admitted into evidence, the Department's position is legally presumed to be correct. In response, the taxpayer did not present any evidence indicating that dyed diesel fuel was not in the tank. The dye concentration of the fuel in the taxpayer's tank, 10.8 parts per million, is clearly greater than the minimum amount set in the regulation.

The taxpayer argues that the penalty should be dismissed because the Department violated his constitutional right to be free from unlawful searches and seizures. He claims that the agents never saw the truck on the highway and lacked probable cause to enter his property. He contends that when the agents arrived on his property, they did not have a search warrant and did not read him his Miranda rights. According to the taxpayer, this case does not involve a civil matter because the agents were from the Department's Bureau of Criminal Investigation, and the rules concerning criminal proceedings should apply.

In the taxpayer's view, the State has failed to prove its case because it has not presented evidence to substantiate its case. The taxpayer admits that he is the owner of the truck, but he states that he weighs 490 pounds and cannot fit behind the steering wheel. He claims he has never driven the truck, and the truck was not operational. The taxpayer also claims that there were two tanks for the truck, and it is not clear from which tank the agent actually took the fuel. The taxpayer maintains that three of the four of his employees who work for his construction company did not graduate from high school and have a background of poverty. He claims that one of them could have inadvertently placed the dyed fuel in the tank of the truck. According to the taxpayer, the legislature did not intend for the law to be strictly applied, and the law should not be strictly followed when there are extenuating circumstances such as these.

In addition, the taxpayer claims that the Department violated Form RMFT-130, Dyed Diesel Fuel Inspection Notice, which states that the agents will present a written notice to the person who owns the place to be inspected. The taxpayer contends that he did not receive written notice. He also states that Form RMFT-130 requires the

inspection to be done during "normal business hours," (Taxpayer Ex. #4) and he does not have normal business hours at his residence. Furthermore, the taxpayer argues that Form RMFT-130 says that he cannot be liable for the penalty unless he knew or had reason to know that the fuel was dyed. The taxpayer contends that he did not know that there was dyed fuel in the tank. Finally, the taxpayer states that Form RMFT-130 requires the Department to determine the amount and composition of the fuel and that the Department did not give the taxpayer a lab report with this information.

The taxpayer claims that he has been harassed, abused emotionally, and harmed financially. He argues that the State has caused irreparable damage to his reputation and business. He contends that the State should be censured for violating his constitutional rights. The taxpayer asks that the State be ordered to issue a written apology to him and compensate him in the amount of $2,500 for the unlawful intrusion and home invasion.

The taxpayer's arguments are without merit. Unreasonable searches and seizures are prohibited under the fourth amendment to the United States Constitution. U.S. Const., amend. IV. Reasonableness generally requires a warrant supported by probable cause. People v. Smith, 346 Ill. App. 3d 146, 153 (2nd Dist. 2004). Evidence obtained without it is generally excluded, but this exclusionary rule has never been applied in civil proceedings.[1] U.S. v. Janis, 428 U.S. 433, 447 (1976). In addition, if the rule did apply, a search that was conducted with a defendant's voluntary consent but without a warrant does not violate the fourth amendment. Smith, *supra*.

Even if it is assumed that the exclusionary rule applied in this case, the taxpayer consented to allowing the agents to test the fuel. When the agents arrived at the

[1] The rule may, however, be applied in proceedings that are considered to be "quasi-criminal," such as forfeiture proceedings. Janis, 428 U. S. at 447, f.n. 17. The instant proceeding does not fall within that category.

taxpayer's home, they explained to the taxpayer the purpose of the visit. They provided him with a copy of the Form RMFT-130, Dyed Diesel Fuel Inspection Notice, and explained the inspection process. The taxpayer agreed to cooperate. The taxpayer has never disputed this and has never indicated in any way that he was under any duress or coercion.[2] The taxpayer's constitutional rights have not been violated.

In addition, subsection (a) of the Department's regulation concerning penalties for dyed diesel fuel violations provides the following definition of "operator":

> "Operator" means the person who has physical control over a motor vehicle. For purposes of this Section, the driver of a vehicle is considered the operator of that vehicle irrespective of any ownership or lease agreements. When a motor vehicle is not under the control of a driver, the operator will be the person that has physical control over that vehicle. For instance, if a truck parked on company property is found to have dyed diesel fuel in its tanks, a penalty will be issued to the company. * * * 86 Ill. Admin. Code §500.298(a).

The taxpayer admitted that he owned the truck, and clearly had physical control over it. He, therefore, is considered to be the "operator" for purposes of the statute, and it is irrelevant whether he actually drove it.

The agent's report indicates that the sample of fuel was taken from the ordinary fuel tank and that the taxpayer witnessed the retrieval of the sample. (Dept. Ex. #2) The test results showed that it was taken from the driver's side tank of the vehicle with license number 000000-0, which is the license plate number for the taxpayer's truck. *Id.* The possibility that one of his employees may have inadvertently placed the dyed fuel in that tank does not warrant a dismissal of the penalty.

---

[2] In a criminal proceeding involving the Department, the appellate court found that the auditor and the investigator from the Department were not required to give Miranda warnings before interrogating the taxpayer who was under investigation because the taxpayer was not in custody and there was no issue of coercion. People v. Myers, 39 Ill. App. 3d 411, 415-416 (1st Dist. 1976).

Finally, the taxpayer's arguments concerning Form RMFT-130, Dyed Diesel Fuel Inspection Notice, are not persuasive. Although the taxpayer contends that he did not receive written notice, the form itself is written notice. The taxpayer claims to not have "normal business hours" at his residence, but his business vehicle was parked at his residence, and Thursday at 1:00 p.m. is generally considered to be a normal time to do business. The portion of the form concerning knowledge provides in relevant part as follows:

> Any duly authorized agent of the Department shall have the authority to enter any place and to conduct inspections in accordance with the Motor Fuel Tax Law. Inspections may be at any place at which taxable motor fuel is or may be produced or stored, or at any inspection site where evidence of the following activities may be discovered: * * *(2) where any dyed diesel fuel is held for use or used by any person for a use other than a nontaxable use *and the person knew, or had reason to know, that the fuel was dyed* according to Section 4d of the Motor Fuel Tax Law. (Taxpayer Ex. #4, emphasis added)

This provision does not require a showing that the taxpayer knew or had reason to know the fuel was dyed before the penalty can be imposed. This provision simply indicates where the inspections may take place. The penalty is imposed pursuant to paragraph 15 of section 15 of the Act, which does not include a requirement of knowledge on the part of the taxpayer. It states that if a motor vehicle required to be registered for highway purposes is found to have dyed diesel fuel within its ordinary fuel tanks, the operator shall pay the $2,500 penalty; the statute does not allow the penalty to be waived once a violation has occurred.

With respect to the taxpayer's last argument regarding Form RMFT-130, the form states, "Detainment may continue for a reasonable period of time as is necessary to determine the amount and composition of the fuel." (Taxpayer Ex. #4) The agent's

report indicates that a 4 ounce sample was taken from the ordinary fuel tank, and it was tested by the Department. The test results indicated that it had a dye concentration of 10.8 parts per million. (Dept.'s Ex. #2) Although the taxpayer claims that he did not receive a copy of a lab report, Form RMFT-130 does not state that a report shall be provided, and the taxpayer was not precluded from asking the Department for a copy of the test results. The Department, therefore, followed the procedures stated on the form.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayer's Motion to Dismiss be denied and the penalty be upheld.

Linda Olivero
Administrative Law Judge

Enter: April 2, 2007